

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HOUSE BILL 2820

AN ACT

AMENDING SECTIONS 42-5075, 42-5155 AND 42-5160, ARIZONA REVISED STATUTES;
RELATING TO TAXATION OF MANUFACTURED BUILDINGS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 42-5075, Arizona Revised Statutes, is amended to
3 read:

4 42-5075. Prime contracting classification; exemptions;
5 definitions

6 A. The prime contracting classification is comprised of the business
7 of prime contracting and dealership of manufactured buildings. The sale of a
8 used manufactured building is not taxable under this chapter. **THE PROCEEDS**
9 **FROM ALTERATION AND REPAIRS TO A USED MANUFACTURED BUILDING ARE TAXABLE UNDER**
10 **THIS CHAPTER.**

11 B. The tax base for the prime contracting classification is sixty-five
12 per cent of the gross proceeds of sales or gross income derived from the
13 business. The following amounts shall be deducted from the gross proceeds of
14 sales or gross income before computing the tax base:

15 1. The sales price of land, which shall not exceed the fair market
16 value.

17 2. Sales and installation of groundwater measuring devices required
18 under section 45-604 and groundwater monitoring wells required by law,
19 including monitoring wells installed for acquiring information for a permit
20 required by law.

21 3. The sales price of furniture, furnishings, fixtures, appliances,
22 and attachments that are not incorporated as component parts of or attached
23 to a manufactured building or the setup site. The sale of such items may be
24 subject to the taxes imposed by article 1 of this chapter separately and
25 distinctly from the sale of the manufactured building.

26 4. The gross proceeds of sales or gross income received from a
27 contract entered into for the construction, alteration, repair, addition,
28 subtraction, improvement, movement, wrecking or demolition of any building,
29 highway, road, railroad, excavation, manufactured building or other
30 structure, project, development or improvement located in a military reuse
31 zone for providing aviation or aerospace services or for a manufacturer,
32 assembler or fabricator of aviation or aerospace products within an active
33 military reuse zone after the zone is initially established or renewed under
34 section 41-1531. To be eligible to qualify for this deduction, before
35 beginning work under the contract, the prime contractor must have applied for
36 a letter of qualification from the department of revenue.

37 5. The gross proceeds of sales or gross income derived from a contract
38 to construct a qualified environmental technology manufacturing, producing or
39 processing facility, as described in section 41-1514.02, and from subsequent
40 construction and installation contracts that begin within ten years after the
41 start of initial construction. To qualify for this deduction, before
42 beginning work under the contract the prime contractor must obtain a letter
43 of qualification from the department of revenue. This paragraph shall apply
44 for ten full consecutive calendar or fiscal years after the start of initial
45 construction.

1 6. The gross proceeds of sales or gross income from a contract to
2 provide for one or more of the following actions, or a contract for site
3 preparation, constructing, furnishing or installing machinery, equipment or
4 other tangible personal property, including structures necessary to protect
5 exempt incorporated materials or installed machinery or equipment, and
6 tangible personal property incorporated into the project, to perform one or
7 more of the following actions in response to a release or suspected release
8 of a hazardous substance, pollutant or contaminant from a facility to the
9 environment, unless the release was authorized by a permit issued by a
10 governmental authority:

11 (a) Actions to monitor, assess and evaluate such a release or a
12 suspected release.

13 (b) Excavation, removal and transportation of contaminated soil and
14 its treatment or disposal.

15 (c) Treatment of contaminated soil by vapor extraction, chemical or
16 physical stabilization, soil washing or biological treatment to reduce the
17 concentration, toxicity or mobility of a contaminant.

18 (d) Pumping and treatment or in situ treatment of contaminated
19 groundwater or surface water to reduce the concentration or toxicity of a
20 contaminant.

21 (e) The installation of structures, such as cutoff walls or caps, to
22 contain contaminants present in groundwater or soil and prevent them from
23 reaching a location where they could threaten human health or welfare or the
24 environment.

25 This paragraph does not include asbestos removal or the construction or use
26 of ancillary structures such as maintenance sheds, offices or storage
27 facilities for unattached equipment, pollution control equipment, facilities
28 or other control items required or to be used by a person to prevent or
29 control contamination before it reaches the environment.

30 7. The gross proceeds of sales or gross income that is derived from a
31 contract entered into for the installation, assembly, repair or maintenance
32 of machinery, equipment or other tangible personal property that is deducted
33 from the tax base of the retail classification pursuant to section 42-5061,
34 subsection B, or that is exempt from use tax pursuant to section 42-5159,
35 subsection B, and that does not become a permanent attachment to a building,
36 highway, road, railroad, excavation or manufactured building or other
37 structure, project, development or improvement. If the ownership of the
38 realty is separate from the ownership of the machinery, equipment or tangible
39 personal property, the determination as to permanent attachment shall be made
40 as if the ownership were the same. The deduction provided in this paragraph
41 does not include gross proceeds of sales or gross income from that portion of
42 any contracting activity which consists of the development of, or
43 modification to, real property in order to facilitate the installation,
44 assembly, repair, maintenance or removal of machinery, equipment or other
45 tangible personal property that is deducted from the tax base of the retail

1 classification pursuant to section 42-5061, subsection B or that is exempt
2 from use tax pursuant to section 42-5159, subsection B. For the purposes of
3 this paragraph, "permanent attachment" means at least one of the following:

4 (a) To be incorporated into real property.

5 (b) To become so affixed to real property that it becomes a part of
6 the real property.

7 (c) To be so attached to real property that removal would cause
8 substantial damage to the real property from which it is removed.

9 8. The gross proceeds of sales or gross income received from a
10 contract for constructing any lake facility development in a commercial
11 enhancement reuse district that is designated pursuant to section 9-499.08 if
12 the prime contractor maintains the following records in a form satisfactory
13 to the department and to the city or town in which the property is located:

14 (a) The certificate of qualification of the lake facility development
15 issued by the city or town pursuant to section 9-499.08, subsection D.

16 (b) All state and local transaction privilege tax returns for the
17 period of time during which the prime contractor received gross proceeds of
18 sales or gross income from a contract to construct a lake facility
19 development in a designated commercial enhancement reuse district, showing
20 the amount exempted from state and local taxation.

21 (c) Any other information that the department considers to be
22 necessary.

23 9. The gross proceeds of sales or gross income attributable to the
24 purchase of machinery, equipment or other tangible personal property that is
25 exempt from or deductible from transaction privilege and use tax under:

26 (a) Section 42-5061, subsection A, paragraph 25 or 29.

27 (b) Section 42-5061, subsection B.

28 (c) Section 42-5159, subsection A, paragraph 13, subdivision (a), (b),
29 (c), (d), (e), (f), (i), (j) or (l).

30 (d) Section 42-5159, subsection B.

31 10. The gross proceeds of sales or gross income received from a
32 contract for the construction of an environmentally controlled facility for
33 the raising of poultry for the production of eggs and the sorting, cooling
34 and packaging of eggs.

35 11. The gross proceeds of sales or gross income that is derived from a
36 contract entered into with a person who is engaged in the commercial
37 production of livestock, livestock products or agricultural, horticultural,
38 viticultural or floricultural crops or products in this state for the
39 construction, alteration, repair, improvement, movement, wrecking or
40 demolition or addition to or subtraction from any building, highway, road,
41 excavation, manufactured building or other structure, project, development or
42 improvement used directly and primarily to prevent, monitor, control or
43 reduce air, water or land pollution.

44 12. The gross proceeds of sales or gross income that is derived from
45 the installation, assembly, repair or maintenance of clean rooms that are

1 deducted from the tax base of the retail classification pursuant to section
2 42-5061, subsection B, paragraph 17.

3 13. For taxable periods beginning from and after June 30, 2001, the
4 gross proceeds of sales or gross income derived from a contract entered into
5 for the construction of a residential apartment housing facility that
6 qualifies for a federal housing subsidy for low income persons over sixty-two
7 years of age and that is owned by a nonprofit charitable organization that
8 has qualified under section 501(c)(3) of the internal revenue code.

9 14. For taxable periods beginning from and after December 31, 1996 and
10 ending before January 1, 2011, the gross proceeds of sales or gross income
11 derived from a contract to provide and install a solar energy device. The
12 deduction shall not exceed five thousand dollars for each contract. Before
13 deducting any amount under this paragraph, the contractor shall register with
14 the department as a solar energy contractor. By registering, the contractor
15 acknowledges that it will make its books and records relating to sales of
16 solar energy devices available to the department for examination.

17 15. The gross proceeds of sales or gross income derived from a contract
18 entered into for the construction of a launch site, as defined in 14 Code of
19 Federal Regulations section 401.5.

20 16. The gross proceeds of sales or gross income derived from a contract
21 entered into for the construction of a domestic violence shelter that is
22 owned and operated by a nonprofit charitable organization that has qualified
23 under section 501(c)(3) of the internal revenue code.

24 17. The gross proceeds of sales or gross income derived from contracts
25 to perform postconstruction treatment of real property for termite and
26 general pest control, including wood destroying organisms.

27 18. The gross proceeds of sales or gross income received from contracts
28 entered into before July 1, 2006 for constructing a state university research
29 infrastructure project if the project has been reviewed by the joint
30 committee on capital review before the university enters into the
31 construction contract for the project. For the purposes of this paragraph,
32 "research infrastructure" has the same meaning prescribed in section 15-1670.

33 19. The gross proceeds of sales or gross income received from a
34 contract for the construction of any building, or other structure, project,
35 development or improvement owned by a qualified business under section
36 41-1516 for harvesting or the initial processing of qualifying forest
37 products removed from qualifying projects as defined in section 41-1516 if
38 actual construction begins before January 1, 2010. To qualify for this
39 deduction, the prime contractor must obtain a letter of qualification from
40 the department of commerce before beginning work under the contract.

41 20. The gross proceeds of sales or gross income received from a
42 contract for the construction of any building or other structure associated
43 with motion picture production in this state. To qualify for the deduction,
44 at the time the contract is entered into the motion picture production
45 company must present to the prime contractor its certificate that is issued

1 pursuant to section 42-5009, subsection H and that establishes its
2 qualification for the deduction.

3 C. Entitlement to the deduction pursuant to subsection B, paragraph 7
4 of this section is subject to the following provisions:

5 1. A prime contractor may establish entitlement to the deduction by
6 both:

7 (a) Marking the invoice for the transaction to indicate that the gross
8 proceeds of sales or gross income derived from the transaction was deducted
9 from the base.

10 (b) Obtaining a certificate executed by the purchaser indicating the
11 name and address of the purchaser, the precise nature of the business of the
12 purchaser, the purpose for which the purchase was made, the necessary facts
13 to establish the deductibility of the property under section 42-5061,
14 subsection B, and a certification that the person executing the certificate
15 is authorized to do so on behalf of the purchaser. The certificate may be
16 disregarded if the prime contractor has reason to believe that the
17 information contained in the certificate is not accurate or complete.

18 2. A person who does not comply with paragraph 1 of this subsection
19 may establish entitlement to the deduction by presenting facts necessary to
20 support the entitlement, but the burden of proof is on that person.

21 3. The department may prescribe a form for the certificate described
22 in paragraph 1, subdivision (b) of this subsection. The department may also
23 adopt rules that describe the transactions with respect to which a person is
24 not entitled to rely solely on the information contained in the certificate
25 provided in paragraph 1, subdivision (b) of this subsection but must instead
26 obtain such additional information as required in order to be entitled to the
27 deduction.

28 4. If a prime contractor is entitled to a deduction by complying with
29 paragraph 1 of this subsection, the department may require the purchaser who
30 caused the execution of the certificate to establish the accuracy and
31 completeness of the information required to be contained in the certificate
32 which would entitle the prime contractor to the deduction. If the purchaser
33 cannot establish the accuracy and completeness of the information, the
34 purchaser is liable in an amount equal to any tax, penalty and interest which
35 the prime contractor would have been required to pay under article 1 of this
36 chapter if the prime contractor had not complied with paragraph 1 of this
37 subsection. Payment of the amount under this paragraph exempts the purchaser
38 from liability for any tax imposed under article 4 of this chapter. The
39 amount shall be treated as a transaction privilege tax to the purchaser and
40 as tax revenues collected from the prime contractor in order to designate the
41 distribution base for purposes of section 42-5029.

42 D. Subcontractors or others who perform services in respect to any
43 improvement, building, highway, road, railroad, excavation, manufactured
44 building or other structure, project, development or improvement are not
45 subject to tax if they can demonstrate that the job was within the control of

1 a prime contractor or contractors or a dealership of manufactured buildings
2 and that the prime contractor or dealership is liable for the tax on the
3 gross income, gross proceeds of sales or gross receipts attributable to the
4 job and from which the subcontractors or others were paid.

5 E. Amounts received by a contractor for a project are excluded from
6 the contractor's gross proceeds of sales or gross income derived from the
7 business if the person who hired the contractor executes and provides a
8 certificate to the contractor stating that the person providing the
9 certificate is a prime contractor and is liable for the tax under article 1
10 of this chapter. The department shall prescribe the form of the certificate.
11 If the contractor has reason to believe that the information contained on the
12 certificate is erroneous or incomplete, the department may disregard the
13 certificate. If the person who provides the certificate is not liable for
14 the tax as a prime contractor, that person is nevertheless deemed to be the
15 prime contractor in lieu of the contractor and is subject to the tax under
16 this section on the gross receipts or gross proceeds received by the
17 contractor.

18 F. Every person engaging or continuing in this state in the business
19 of prime contracting or dealership of manufactured buildings shall present to
20 the purchaser of such prime contracting or manufactured building a written
21 receipt of the gross income or gross proceeds of sales from such activity and
22 shall separately state the taxes to be paid pursuant to this section.

23 G. For the purposes of section 42-5032.01, the department shall
24 separately account for revenues collected under the prime contracting
25 classification from any prime contractor engaged in the preparation or
26 construction of a multipurpose facility, and related infrastructure, that is
27 owned, operated or leased by the tourism and sports authority pursuant to
28 title 5, chapter 8.

29 H. The gross proceeds of sales or gross income derived from a contract
30 for lawn maintenance services are not subject to tax under this section if
31 the contract does not include landscaping activities. Lawn maintenance
32 service is a service pursuant to section 42-5061, subsection A, paragraph 1,
33 and includes lawn mowing and edging, weeding, repairing sprinkler heads or
34 drip irrigation heads, seasonal replacement of flowers, refreshing gravel,
35 lawn de-thatching, seeding winter lawns, leaf and debris collection and
36 removal, tree or shrub pruning or clipping, garden and gravel raking and
37 applying pesticides, as defined in section 3-361, and fertilizer materials,
38 as defined in section 3-262.

39 I. The gross proceeds of sales or gross income derived from
40 landscaping activities are subject to tax under this section. Landscaping
41 includes installing lawns, grading or leveling ground, installing gravel or
42 boulders, planting trees and other plants, felling trees, removing or
43 mulching tree stumps, removing other imbedded plants, building or modifying
44 irrigation berms, repairing sprinkler or watering systems, installing
45 railroad ties and installing underground sprinkler or watering systems.

1 J. The portion of gross proceeds of sales or gross income attributable
2 to the actual direct costs of providing architectural or engineering services
3 that are incorporated in a contract is not subject to tax under this
4 section. For the purposes of this subsection, "direct costs" means the
5 portion of the actual costs that are directly expended in providing
6 architectural or engineering services.

7 K. THE FOLLOWING APPLIES TO MANUFACTURED BUILDINGS:

8 1. FOR SALES IN THIS STATE WHERE THE DEALER OF MANUFACTURED BUILDINGS
9 CONTRACTS TO DELIVER THE BUILDING TO A SETUP SITE OR TO PERFORM THE SETUP IN
10 THIS STATE, THE TAXABLE SITUS IS THE SETUP SITE.

11 2. FOR SALES IN THIS STATE WHERE THE DEALER OF MANUFACTURED BUILDINGS
12 DOES NOT CONTRACT TO DELIVER THE BUILDING TO A SETUP SITE OR DOES NOT PERFORM
13 THE SETUP, THE TAXABLE SITUS IS THE LOCATION OF THE DEALERSHIP WHERE THE
14 BUILDING IS DELIVERED TO THE BUYER.

15 3. FOR SALES IN THIS STATE WHERE THE DEALER OF MANUFACTURED BUILDINGS
16 CONTRACTS TO DELIVER THE BUILDING TO A SETUP SITE THAT IS OUTSIDE THIS STATE,
17 THE SITUS IS OUTSIDE THIS STATE AND THE TRANSACTION IS EXCLUDED FROM TAX.

18 ~~K.~~ L. For the purposes of this section:

19 1. "Contracting" means engaging in business as a contractor.

20 2. "Contractor" is synonymous with the term "builder" and means any
21 person, firm, partnership, corporation, association or other organization, or
22 a combination of any of them, that undertakes to or offers to undertake to,
23 or purports to have the capacity to undertake to, or submits a bid to, or
24 does personally or by or through others, construct, alter, repair, add to,
25 subtract from, improve, move, wreck or demolish any building, highway, road,
26 railroad, excavation, manufactured building or other structure, project,
27 development or improvement, or to do any part of such a project, including
28 the erection of scaffolding or other structure or works in connection with
29 such a project, and includes subcontractors and specialty contractors. For
30 all purposes of taxation or deduction, this definition shall govern without
31 regard to whether or not such contractor is acting in fulfillment of a
32 contract.

33 3. "Dealership of manufactured buildings" means a dealer who either:

34 (a) Is licensed pursuant to title 41, chapter 16 and who sells ~~at~~
35 ~~retail~~ manufactured buildings TO THE FINAL CONSUMER. OTHER THAN SALES FOR
36 RESALE TO ANOTHER DEALERSHIP OF MANUFACTURED BUILDING, SALES AT RESALE DO NOT
37 INCLUDE SALES TO A LESSOR OF MANUFACTURED BUILDINGS.

38 (b) Supervises, performs or coordinates the excavation and completion
39 of site improvements, setup or moving of a manufactured building including
40 the contracting, if any, with any subcontractor or specialty contractor for
41 the completion of the contract.

42 4. "Manufactured building" means a manufactured home, mobile home or
43 factory-built building, as defined in section 41-2142.

44 5. "Prime contracting" means engaging in business as a prime
45 contractor.

1 6. "Prime contractor" means a contractor who supervises, performs or
2 coordinates the construction, alteration, repair, addition, subtraction,
3 improvement, movement, wreckage or demolition of any building, highway, road,
4 railroad, excavation, manufactured building or other structure, project,
5 development or improvement including the contracting, if any, with any
6 subcontractors or specialty contractors and who is responsible for the
7 completion of the contract.

8 7. "Sale of a used manufactured building" does not include a lease of
9 a used manufactured building.

10 Sec. 2. Section 42-5155, Arizona Revised Statutes, is amended to read:

11 42-5155. Levy of tax; tax rate; purchaser's liability

12 A. There is levied and imposed an excise tax on the storage, use or
13 consumption in this state of tangible personal property purchased from a
14 retailer or utility business, as a percentage of the sales price. A
15 MANUFACTURED BUILDING PURCHASED OUTSIDE THIS STATE AND SETUP IN THIS STATE IS
16 SUBJECT TO TAX UNDER THIS SECTION AND IN THIS CASE THE PERCENTAGE IS
17 SIXTY-FIVE PER CENT OF THE SALES PRICE.

18 B. The tax imposed by this section applies to any purchaser which
19 purchased tangible personal property for resale but subsequently uses or
20 consumes the property.

21 C. The tax rate shall equal the rate of tax prescribed by section
22 42-5010, subsection A as applied to retailers and utility businesses
23 according to the respective classification under articles 1 and 2 of this
24 chapter for the same type of transaction or business activity.

25 D. In addition to the rate prescribed by subsection C of this section,
26 if approved by the qualified electors voting at a statewide general election,
27 an additional rate increment of six-tenths of one per cent is imposed and
28 shall be collected through June 30, 2021. The taxpayer shall pay taxes
29 pursuant to this subsection at the same time and in the same manner as under
30 subsection C of this section. The department shall separately account for the
31 revenues collected with respect to the rate imposed pursuant to this
32 subsection, and the state treasurer shall pay all of those revenues in the
33 manner prescribed by section 42-5029, subsection E.

34 E. Every person storing, using or consuming in this state tangible
35 personal property purchased from a retailer or utility business is liable for
36 the tax. The person's liability is not extinguished until the tax has been
37 paid to this state.

38 F. A receipt from a retailer or utility business that maintains a
39 place of business in this state or from a retailer or utility business that
40 is authorized by the department to collect the tax, under such rules as it
41 may prescribe, and that is for the purposes of this article regarded as a
42 retailer or utility business maintaining a place of business in this state,
43 given to the purchaser as provided in section 42-5161 is sufficient to
44 relieve the purchaser from further liability for the tax to which the receipt
45 refers.

1 Sec. 3. Section 42-5160, Arizona Revised Statutes, is amended to read:

2 42-5160. Liability for tax

3 Any person who uses, stores or consumes any tangible personal property
4 upon which a tax is imposed by this article and upon which the tax has not
5 been collected by a registered retailer or utility business shall pay the tax
6 as provided by this article, but every retailer and utility business
7 maintaining a place of business in this state and making sales of tangible
8 personal property for storage, use or other consumption in this state shall
9 collect the tax from the purchaser or user unless the property is exempt
10 under this article or the purchaser or user pays the tax directly to the
11 department as provided by section 42-5167. IN THE CASE OF A MANUFACTURED
12 BUILDING THAT IS PURCHASED FROM A DEALER OUTSIDE THIS STATE AND BROUGHT INTO
13 THIS STATE, ANY PERSON WHO IS HIRED TO SETUP THE MANUFACTURED BUILDING AND
14 WHO IS LICENSED PURSUANT TO TITLE 41, CHAPTER 16, ARTICLE 4 SHALL COLLECT THE
15 TAX FROM THE OWNER AND REMIT THE TAX WITH ANY TAX THAT IS DUE UNDER THE PRIME
16 CONTRACTING CLASSIFICATION.

17 Sec. 4. Intent

18 It is the intent of this legislature, by this act, to clarify existing
19 law on the situs and collection of transaction privilege tax on manufactured
20 buildings.